

ID: CCA_2010042015384040

Number: **201022015**

Release Date: 6/4/2010

Office:

UILC: 6331.00-00, 6331.33-00

From:

Sent: Tuesday, April 20, 2010 3:38:41 PM

To:

Cc:

Subject: Levy on retirement income

You asked for assistance with a notice of levy served on the administrator of a pension benefit plan in which the delinquent taxpayer is enrolled. The Service used a Form 668-A to serve the notice. The administrator of the plan informed the Service that she would not honor the levy because it stated on its face "This levy won't attach funds in IRAs, self-employed individuals' retirement plan, or any other retirement plans in your possession or control unless it is signed in the block to the right." The form was not signed in the indicated block (although it was signed at the bottom). The revenue officer who issued the levy notice requested assistance from division counsel, who in turn asked for assistance from the national office. For the reasons that follow, the revenue officer should reissue the notice of levy on a Form 668-W and signed in accordance with IRM 1.2.44.3(8).

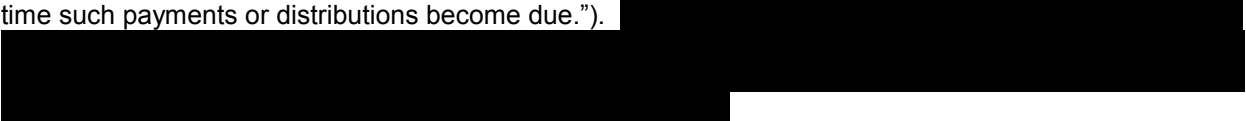
The memo referring the issue asks which form should be used when the target of the levy is income from a retirement or pension plan, which official must sign this form, and finally, whether this levy can continue after the collection statute expiration date. [REDACTED]

The confusion in this case stems from the fact that there are two kinds of levy that can be served involving retirement or pension accounts. When a taxpayer is entitled to income from the account, the Service may levy on that income, although the Service is cautioned to use discretion before deciding to levy. See IRM 5.11.6.1 and 5.11.5.3. Part of this income may be exempt from levy. See IRM 5.11.5.4(1). If the taxpayer has a fixed and determinable right to future income from the plan, the levy remains in effect until it is released. The IRM indicates that this levy should be served using Form 668-W, Notice of Levy on Wages, Salary, and Other Income. IRM 5.11.2.1.2. According to delegation order 5-3, this notice may be signed by GS-09 Revenue Officers (among several other classes of employees). IRM 1.2.44.3(9).

On the other hand, if the taxpayer is not yet entitled to income from the retirement plan, but is entitled to make a lump sum withdrawal, the Service may levy the money accumulated in the plan. IRM 5.11.6.2. Because funds in a retirement plan are not income, the Service should not use Form 668-W to serve notice of this kind of levy. IRM 5.11.2.1.2. Instead it should use Form 668-A, which must be signed by an SB/SE Director or other Service personnel listed in IRM 1.2.44.3(24).

In this case, the Service meant to levy the taxpayer's retirement income. Instead of using Form 668-A, it should have used Form 668-W. Because the levy was not on funds in a retirement plan, there is no need to have the form signed by an SB/SE director. The Service should reissue the notice of levy on a Form 668-W. The revenue officer may explain to the plan administrator why a different form is being used.

The revenue officer is correct that in general, a levy served on retirement income remains enforceable after the expiration of the statutory period for collection, as stated in IRM 5.11.6.1(6). See Rev. Rul. 55-210 ("[I]t is the position of the Internal Revenue Service that where a taxpayer has an unqualified fixed right, under a trust or a contract, or through a chose in action, to receive periodic payments or distributions of property . . . a notice of levy . . . is effective to reach, in addition to payments or distributions then due, any subsequent payments or distributions that will become due thereunder, at the time such payments or distributions become due.").



If you have any questions or concerns, please give me a call.

Thanks